

12-16-05

ANDREWS
ATTORNEYS
KURTH LLP



111 Congress Avenue, Suite 1700
Austin, Texas 78701
512.320.9200 Phone
512.320.9292 Fax
andrewskurth.com

Scott Denko
(512) 320.9259 Direct
scottdenko@andrewskurth.com

December 15, 2005

VIA EXPRESS MAIL NO. EV760876142US

Commissioner for Patents
Mail Stop Petition, Attn: Tom Hawkins
P.O. Box 1450
Alexandria, VA 22313-1450

VIA EXPRESS MAIL NO. EV760876244US

Commissioner for Patents
Mail Stop Technology Center 2122, Attn: Peter Wong
P.O. Box 1450
Alexandria, VA 22313-1450

Re: Application No.: 09/494,765

Filing Date: 01/31/00

Title: Software Analysis System Having An Apparatus For Selectively Collecting
Analysis Data From A Target System Executing Software Instrumented With Tag
Statements And Method For Use Thereof

Inventor: Derrick Jason Birum

Assignee: Metrowerks Corporation

Examiner: Chameli Das

Group: 2122

Atty Docket No.: 650059.420

Dear Commissioner:

Enclosed please find a copy of the following which were previously filed with the U.S. Patent and Trademark Office on April 16, 2004 and September 20, 2004:

1. Petition To Withdraw Holding of Abandonment Based On Failure To Receive Office Action;
2. Express Mail receipt dated 04/16/04 and 09/20/04; and
3. Return Postcard marked "Received by Office of Petitions 04/19/04 and 09/20/04".

December 15, 2005

As indicated from the attached correspondence, we previously spoke with the examiner, Chameli Das, regarding this matter. On September 20, 2004, we complied with her request to submit another copy of the petition first filed on April 16, 2004.

In March 2005, our office spoke with Ms. Hicks in the Office of Petitions who advised us to contact Examiner Tuan T. Dam. On March 24, 2005, Examiner Dam advised us to contact Ms. Hicks. We spoke with Ms. Hicks again and she advised us that the decision on the petition falls under the discretion of the Director of the Technology Center, which is Peter Wong. That same day, we spoke with Jeannie Mines, assistant to Peter Wong, who stated that she would look into the matter. Our office left another voicemail for Ms. Mines on December 7, 2005 but we have not yet received a response.

Per the attached printout from PAIR on the US Patent and Trademark Office Website, the status of this matter still shows abandoned. To date, we have received no substantive communications or correspondence from the USPTO regarding this matter despite our multiple efforts both written and by telephone to get a response. We will be calling and writing again so we must with reluctance insist that the Office respond in substance and without further delay to the Petition that was first filed on April 19, 2004.

We believe that no fees are due related to the filing of the above-referenced Petition. If, however, the Commissioner deems that fees are due, then the Commissioner is hereby authorized to debit the costs of such fees to Deposit Account No. 50-3534 on which account the undersigned is authorized to charge.

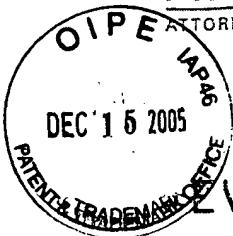
Yours very truly,

J. Scott Denko
Registration No. 37,606

12-16-05

SFW

ANDREWS
ATTORNEYS
KURTH LLP



111 Congress Avenue, Suite 1700
Austin, Texas 78701
512.320.9200 Phone
512.320.9292 Fax
andrewskurth.com

Scott Denko
(512) 320.9259 Direct
scottdenko@andrewskurth.com

September 20, 2004

VIA EXPRESS MAIL NO. EV434215647US

Assistant Commissioner for Patents
Attn: Tom Hawkins
Mail Stop Petition
P.O. Box 1450
Alexandria, VA 22313-1450

Re: Application No.: 09/494,765
Filing Date: 01/31/00
Title: Software Analysis System Having An Apparatus For Selectively Collecting
Analysis Data From A Target System Executing Software Instrumented With Tag
Statements And Method For Use Thereof
Inventor: Derrick Jason Birum
Assignee: Metrowerks Corporation
Examiner: Chameli Das
Group: 2122
Atty Docket No.: 650059.420

Dear Assistant Commissioner:

Enclosed please find a copy of the following which were previously filed with the U.S. Patent and Trademark Office on April 16, 2004:

1. Petition To Withdraw Holding of Abandonment Based On Failure To Receive Office Action;
2. Express Mail receipt dated 04/16/04; and
3. Return Postcard marked "Received by Office of Petitions 04/19/04"; and

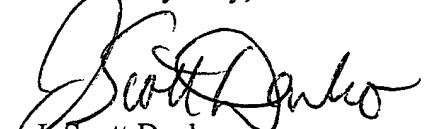
We spoke with the examiner, Chameli Das, regarding this matter. She indicated we should file another copy of the petition because she has not seen it. Accordingly, please file and make the afore-mentioned documents a part of the record hereof.

We believe that no fees are due related to the filing of the above-referenced Petition. If, however, the Commissioner deems that fees are due, then the Commissioner is hereby authorized to debit the costs of such fees to Deposit Account No. 50-0897 on which account the undersigned is authorized to charge.

Assistant Commissioner for Patents
September 20, 2004
Page 2 of 2

Please return the enclosed postcard to confirm receipt of the above-referenced items.

Yours very truly,



J. Scott Denko
Registration No. 37,606

JSD/ad
Encls.

ANDREWS
ATTORNEYS
KURTH LLP



111 Congress Avenue, Suite 1700
Austin, Texas 78701
512.320.9200 Phone
512.320.9292 Fax
andrewskurth.com

Scott Denko
(512) 320.9259 Direct
scottdenko@andrewskurth.com

April 16, 2004

VIA EXPRESS MAIL NO. EV434215616US

EV434215616US

Commissioner for Patents
Mail Stop Petition
Attn: Tom Hawkins
P.O. Box 1450
Alexandria, VA 22313-1450

Re: Application No.: 09/494,765

Filing Date: 01/31/00

Title: Software Analysis System Having An Apparatus For Selectively Collecting
Analysis Data From A Target System Executing Software Instrumented With Tag
Statements And Method For Use Thereof

Inventor: Derrick Jason Birum

Assignee: Metrowerks Corporation

Examiner: Chameli Das

Group: 2122

Atty Docket No.: 650059.420

Dear Commissioner:

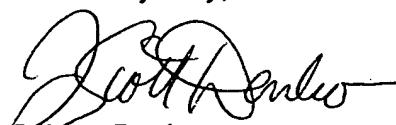
Please find enclosed for filing the following:

1. Petition To Withdraw Holding of Abandonment Based On Failure To Receive Office Action; and
2. A return postcard for confirmation of receipt.

We believe that no fees are due related to the filing of the above-referenced Petition. If, however, the Commissioner deems that fees are due, then the Commissioner is hereby authorized to debit the costs of such fees to Deposit Account No. 50-0897 on which account the undersigned is authorized to charge.

Please return the enclosed postcard to confirm receipt of the above-referenced items.

Yours very truly,



J. Scott Denko
Registration No. 37,606

As of 4/12/04

METROWERKS PATENT DOCKET

| | Appl. No. | Filing Date | US Patent No | Inventors | Status – Last Action | Action Needed |
|---|------------|-------------|----------------------|---|----------------------|---------------|
| Software Analysis System Having an Apparatus for Selectively Collecting Analysis Data From a Target System Executing Software Instruments with Tag Statements and Methods for Use Thereof (420) | 09/494,765 | 1/31/00 | Birum; Ellis; Tinker | 10/28/03 – Filed Amendment and Response 10/29/03 – Filed Revocation of POA with New POA and Change of Correspondence Address 3/30/04 – Rec'd Notice of Acceptance of POA from PTO | | |



BEST AVAILABLE COPY

Exhibit B

PATENT APPLICATION INDEX

Docket No. 650059-420 Client Ref. No.
 Inventor Derrick Jason Birum, Richard Donald Ellis and Jeffrey Lee Tinker
 Invention Title SOFTWARE ANALYSIS SYSTEM HAVING AN APPARATUS FOR SELECTIVELY COLLECTING ANALYSIS DATA FROM A LARGE SYSTEM EXECUTING SOFTWARE INSTRUMENTED WITH TAG STATEMENTS AND METHOD FOR USE THEREOF

U.S. Filing Date January 31, 2000

U.S. Application No. 09/494,765

Examiner Phone No. 0

Art Unit 2762

File History

Small Entity NO

Assigned To Metrowerks, recorded on 04/28/03, at Reel 013609, Frame 0862

General Authorization Filed: January 31, 2000



| | Document | Date Filed with PTO | Date Mailed from PTO | Due Date |
|-----|---|---------------------|----------------------|----------|
| 1. | Application (w/ Dec. Assign., General Authorization and Information Disclosure Statement) | 01/31/2000 | | |
| 2. | Request for Refund and Small entity Statement | 03/15/00 | | |
| 3. | Acknowledgement of Request for Refund | | 03/28/00 | |
| 4. | Recorded Assignment | | 04/18/00 | |
| 5. | FILING RECEIPT | | 04/25/00 | |
| 6. | European Search Report rcvd from foreign associate | | 06/20/01 | 08/20/01 |
| 7. | Supplemental Information Disclosure Statement w/EP Search | 08/15/01 | | |
| 8. | Supplemental IDS with 12 References | 06/01/03 | | |
| 9. | Recorded Assignment -Assigned to Metrowerks | 04/28/03 | | |
| 10. | Office Action | 04/28/03 | 07/28/03 | |
| 11. | Petition for extension of time, amendment & response | 10/28/03 | | 10/28/03 |
| 12. | Declaration of New Atty with New Pur Atty is in Change of Corp Address | 10/29/03 | | |
| 13. | Notice of Abandonment | | 4/8/04 | |
| 14. | Notice of Acceptance of POA | | 3/30/04 | |
| 15. | | | | |
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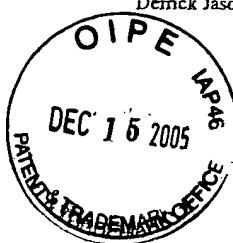


UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/494,765 | 01/31/2000 | Derrick Jason Birum | 120073.420 | 3907 |

36485 7590 04/08/2004
J. SCOTT DENKO
ANDREWS & KURTH LLP
111 CONGRESS AVE., SUITE 1700
AUSTIN, TX 78701



| | |
|--------------|--------------|
| EXAMINER | |
| DAS, CHAMELI | |
| ART UNIT | PAPER NUMBER |
| 2122 | 13 |

DATE MAILED: 04/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Date Received: 4/15/04

Date Due: _____

Docketed by: _____

Exhibit A



| APPLICATION NUMBER | FILING DATE | FIRST NAMED APPLICANT | ATTORNEY DOCKET NO. |
|--------------------|-------------|-----------------------|---------------------|
| 1494765 | | | |

**BEST AVAILABLE COPY**

EXAMINER _____

ART UNIT _____

PAPER NUMBER _____

13

DATE MAILED:

NOTICE OF ABANDONMENT

This application is abandoned in view of:

**ABANDONMENT
CONVENTION PERSON IS:
TOM HAWKINS**

Applicant's failure to timely file a proper reply to the Office letter mailed on _____ 305-8380.

A reply (with Certificate of Mailing or Transmission of _____) was received on _____ which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.

A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).

A reply was received on _____, but it does not constitute a proper reply, or a *bona fide* attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in the last box below).

No reply has been received.



Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).

The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85)(or Notice of Publication Fee Due).

The submitted fee of \$ _____ is insufficient. A balance of \$ _____ is due.
The issue fee by 37 CFR 1.18 is \$ _____. The publication fee, if required, by 37 CFR 1.18(d) is \$ _____.

The issue fee and publication fee, if applicable, have not been received.

Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTOL-37).

Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.

No corrected drawings have been received.

The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all the applicants.

The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon filing of a continuing application.

The decision by the Board of Patent Appeals and Interferences rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.

The reason(s) below:

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term

BEST AVAILABLE COPY

Attorney Docket No. 650059.420



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 09/494,765

Title: Software Analysis System Having An Apparatus For Selectively Collecting Analysis Data From A Target System Executing Software Instrumented With Tag Statements And Method For Use Thereof

Inventor: Derrick Jason Birum

Assignee: Metrowerks Corporation

Filing Date: 01/31/00

Examiner: Chameli Das

Group: 2122

Assistant Commissioner for Patents

Mail Stop Petition

Attn: Tom Hawkins

P.O. Box 1450

Alexandria, VA 22313-1450

CERTIFICATE OF MAILING UNDER 37 CFR §1.10

I hereby certify that this paper or fee is being deposited with the United States Postal Service via Express Mail EV434215616US addressed to Assistant Commissioner for Patents, Mail Stop Petition, P.O. Box 1450, Alexandria, VA 22313-1450 on the 16 day of April, 2004.



Angelia Dedek

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT
BASED ON FAILURE TO RECEIVE OFFICE ACTION**

The Applicant respectfully petitions the U.S. Patent and Trademark Office to withdraw the holding of abandonment of Patent Application No. 09/494,765 under *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971) and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 O.G. 53 (Nov. 16, 1993).

Regarding the above-referenced application, the Applicant received a Notice of Abandonment mailed on April 8, 2004 which states as the cause of abandonment failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of a Notice of Allowance and Issue Fee Due. Neither the Applicant or Applicant's representative received a Notice of Allowance and Issue Fee Due in this matter.

REPLY AND STATEMENT

The Notice of Abandonment was mailed on April 8, 2004 and states as the cause of abandonment failure to timely pay a required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of a Notice of Allowance and Issue Fee Due. A copy of the Notice is attached as Exhibit "A".

The Applicant never received a Notice of Allowance and Issue Fee Due in this matter. A search of the file jacket and docket records maintained by the office of the Applicant's representative indicates that such Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered *had it been received* and docketed is attached as Exhibit "B".

The Applicant filed a "Revocation of Power of Attorney With New Power of Attorney and Change of Correspondence Address" on October 29, 2003, which is attached as Exhibit "C". The filing of the Revocation of Power of Attorney With New Power of Attorney and Change of Correspondence Address is evidenced by a copy of the return receipt postcard bearing the stamp of the United States Patent and Trademark Office indicating its receipt.

The Applicant hereby requests that a copy of the Notice of Allowance and Issue Fee due be promptly transmitted by facsimile to the Applicant's undersigned attorney at (512) 320-9292 so that Applicant may submit the required Issue Fee and Publication Fee, if applicable.

PETITION FEE

The Applicant believes that no fee is due with the filing of this Petition. However, if the Commissioner determines that such a fee is due, the Commissioner is hereby authorized to debit such fees from the firm Deposit Account No. 50-0897 on which the undersigned is authorized to sign.

SUMMARY

The Commissioner is hereby authorized to charge any fee deficiency to our deposit account 50-0897.

The Applicant respectfully requests an early decision on this Petition and appreciates the attention of the Petitions Office and the Petitions Examiner. The Applicant asks that the Decision on Petition be transmitted by facsimile to the Applicant's undersigned attorney at (512) 320-9292. The Applicant additionally requests a copy of the Notice of Allowance and Issue Fee Due be transmitted by facsimile to the Applicant's undersigned attorney at (512) 320-9292. Should the Petitions Examiner have any questions upon which the Applicant's attorney may be able to provide assistance, a phone call to the Applicant's attorney at the phone number listed below would be welcome.

Respectfully submitted,

By: 
J. Scott Denko
Attorney for Applicant
Registration No. 37,606

ANDREWS KURTH, L.L.P.
111 Congress Ave., Suite 1700
Austin, Texas 78701-4069
(512) 320-9259 (office)
(512) 320-9292 (facsimile)

Date: April 16, 2004

ANDREWS
ATTORNEYS
KURTH LLP



Andrews & Kurth LLP.
111 Congress Avenue, Suite 1700
Austin, Texas 78701
512.320.9200 Phone
512.320.9292 Fax
andrewskurth.com

J. Scott Denko
512.320.9259 Direct
scottdenko@aklp.com@andrewskurth.com

October 29, 2003

BY EXPRESS MAIL
AIRBILL NO. EV271668782US

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Re: Application No.: 09/494,765
Title: "Software Analysis System Having An Apparatus For Selectively Collecting Analysis Data From A Target System Executing Software Instrumented With Tag Statements And Method For Use Thereof"
Filing Date: 01/31/00.
Inventor: Derrick J. Birum, et al
Assignee: Metrowerks Corporation
Examiner: A. Khatri
Group: 2762
Docket No. 120073.420

Dear Commissioner:

Enclosed for filing please find the following:

1. Revocation of Power of Attorney With New Power of Attorney and Change of Correspondence Address; and
2. Statement Under 37 C.F.R. § 3.73(b).

Please return the postcard confirming your receipt of the enclosed materials.

Yours truly,

ANDREWS KURTH LLP

J. Scott Denko
Exhibit C



Attorney Docket No.: 120073.420

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Derrick J. BIRUM

Group Art Unit: 2762

Application No.: 09/494,765

Examiner: A. Khatri

Filing Date: January 31, 2000

Confirmation No.: 3907

Title: SOFTWARE ANALYSIS SYSTEM HAVING AN APPARATUS FOR SELECTIVELY COLLECTING ANALYSIS DATA FROM A TARGET SYSTEM EXECUTING SOFTWARE INSTRUMENTED WITH TAG STATEMENTS AND METHOD FOR USE THEREOF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

STATEMENT UNDER 37 C.F.R. § 3.73(b)

Sir:

METROWERKS CORPORATION, a corporation operating under the laws of the state of Texas, is an owner of the patent application identified above by virtue of either:

A. An assignment from the inventor(s) of the patent application identified above, a copy of which is attached.

OR

B. A chain of title from the inventor(s), of the patent application identified above, to METROWERKS CORPORATION as shown below:

1. From: Derrick J. BIRUM; Richard D. ELLIS & Jeffrey L. TINKER
To: APPLIED MICROSYSTEMS CORPORATION
The document was recorded in the U.S. Patent and Trademark
Office at Reel 010533, Frame 0680.

2. From: APPLIED MICROSYSTEMS CORPORATION
To: METROWERKS CORPORATION
The document was recorded in the U.S. Patent and Trademark
Office at Reel 013609, Frame 0862.

The undersigned (whose title is supplied below) is empowered to sign this statement on behalf of METROWERKS CORPORATION.

Dated: 11/29/03

Signature:

Name: David Clinton

Title: Vice-President of Segment Marketing

Company name: METROWERKS CORPORATION



Attorney Docket No.: 120073.420

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Derrick J. BIRUM, et al. **Group Art Unit:** 2762
Application No.: 09/494,765 **Examiner:** A. Khatri
Filing Date: January 31, 2000 **Confirmation No.:** 3907

Title: SOFTWARE ANALYSIS SYSTEM HAVING AN APPARATUS FOR SELECTIVELY COLLECTING ANALYSIS DATA FROM A TARGET SYSTEM EXECUTING SOFTWARE INSTRUMENTED WITH TAG STATEMENTS AND METHOD FOR USE THEREOF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REVOCATION OF POWER OF ATTORNEY WITH NEW POWER OF ATTORNEY AND CHANGE OF CORRESPONDENCE ADDRESS

Sir:

In the above-referenced patent application, I hereby revoke all prior powers of attorney and appoint the **ANDREWS KURTH LLP** attorneys and agents associated with Customer Number 36,485 to prosecute and maintain the patent application identified above and to transact all business in the Patent and Trademark Office connected therewith, including full power of association, substitution, and revocation.

Please address all telephone calls to: **J. Scott Denko** at (512) 320-9259.

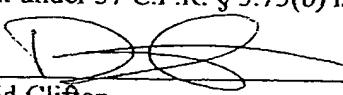
Please address all correspondence to **J. Scott Denko** at the address corresponding to Customer Number 36,485, currently:

J. Scott Denko
ANDREWS KURTH LLP
Suite 1700
111 Congress Ave., Suite 1700
Austin, Texas 78701

I am the:

Assignee of record of the entire interest. (Statement under 37 C.F.R. § 3.73(b) is attached).

Dated: 10/29/03

Signature: 
Name: David Clinton
Title: Vice-President of Segment Marketing
Company name: METROWERKS CORPORATION



BEST AVAILABLE COPY



On the date stamped hereon, the following was received in the U.S. Patent and Trademark Office

Applicant: BIRUM

Docket No. 120073-420

Assignee: Metrowerx

Resp. Atty. DENKO

Filing Date: 11/31/00

Date Mailed: 10-29-03

Serial No.: 09/1494,765

Date Due:

Title: Software Analysis System Having An Apparatus
for Selectively Selecting and Storing Data...

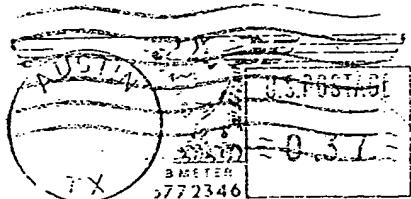
- Transmittal Letter
- Application PCT Utility Conversion
- Prov Div Cont CPA Reissue
- Spec pages; Claims pages
- Drawings pages; Abstract pages
- Declaration POA
- Form 1449, IDS
- Assignment w/ Recordation Cover Sheet
- Cert. of Mailing, First Class
- Authorization to Charge Deposit Account

50-0897

Cert. of Express Mail No. E 17166878243

Other Statement Under 37 CFR 8.3, 73(b)

Redirection of POA with new POA and change correspondence address



ATIN: INTELLECTUAL PROPERTY SECTION

ANDREWS & KURTH, L.L.P.

111 CONGRESS AVE., SUITE 1700

AUSTIN, TEXAS 78701-4069

A. Decker

650059.420

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EV 271668782 US

ORIGIN (POSTAL USE ONLY)

| | | |
|--|---|--|
| PO ZIP Code 78701 | Day of Delivery <input checked="" type="checkbox"/> Next <input type="checkbox"/> Second | Flat Rate Envelope <input type="checkbox"/> |
| Date In 10 29 03 | Postage \$ 13.65 | |
| Mo. Day Year 12 Noon | <input type="checkbox"/> 3 PM | |
| Time In 428 | Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day | Return Receipt Fee |
| Weight 24 lbs. | Int'l Alpha Country Code | COD Fee |
| No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday | Acceptance Client Initials EP | Total Postage & Fees \$ 13.65 |

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| Mo. Day | <input type="checkbox"/> AM <input type="checkbox"/> PM | |
| Delivery Attempt | Time | Employee Signature |
| Mo. Day | <input type="checkbox"/> AM <input type="checkbox"/> PM | |
| Delivery Date | Time | Employee Signature |
| Mo. Day | <input type="checkbox"/> AM <input type="checkbox"/> PM | |

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Label 11-F June 2002



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DOWNTOWN STATION Post Office To Addressee



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| 111 CONGRESS AVE STE 1700 AUSTIN TX 78701-4069 (MW 120073.400) | | |
| TO: (PLEASE PRINT) MAIL STOP COMMISSIONER FOR PATENTS PO BOX 1450 ALEXANDRIA | | PHONE () |
| | | V A 22313-1450 |

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UNITED STATES
POSTAL SERVICE

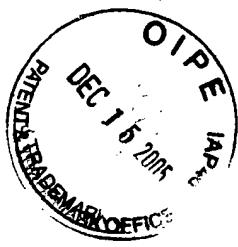
***** WELCOME TO *****
DOWNTOWN STATION
AUSTIN TX 78701-2924
10/29/03 04:28PM

| | | |
|-----------------|--------------|------------|
| Store | USPS | Trans |
| Wkstn | sys5007 | Cashier |
| Cashier's Name | | ROBERT |
| Stock Unit Id | | HERMOSILLO |
| PO Phone Number | 800-215-8777 | 4879830130 |
| USPS # | | |

Exp. Mail PO-ADD
Destination: 22313 0.00
Weight: 2.40 oz
Postage Type: Affixed
Affix. Post.: -13.65
Total Cost: 13.65
Base Rate: 13.65
Label #: Ev271668782US
Subtotal
Total 0.00

Number of Items Sold: 1

Thank you
Please come again!
THE BEST CLERKS IN TOWN



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| | <input type="checkbox"/> Next <input type="checkbox"/> Second | <input type="checkbox"/> |
| Date In | Postage \$ 13 | |
| Mo. Day Year | 12 Noon <input type="checkbox"/> 3 PM | |
| Time In | Military | |
| <input type="checkbox"/> AM <input type="checkbox"/> PM | <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day | |
| Weight lbs. ozs. | Int'l Alpha Country Code | COD Fee |
| No Delivery | Acceptance Clerk Initials | Total Postage & Fees \$ |
| <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday | | |

| DELIVERY (POSTAL USE ONLY) | | |
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| Delivery Attempt | Time | Employee Signature |
| Mo. Day | <input type="checkbox"/> AM <input type="checkbox"/> PM | |
| Delivery Attempt | Time | Employee Signature |
| Mo. Day | <input type="checkbox"/> AM <input type="checkbox"/> PM | |
| Delivery Date | Time | Employee Signature |
| Mo. Day | <input type="checkbox"/> AM <input type="checkbox"/> PM | |
| <input type="checkbox"/> WAIVER OF SIGNATURE (Domestic Only) Additional merchandise insurance is void if waiver of signature is indicated. I wish delivery to be made without obtaining signature of addressee or delivery employee. If delivery employee judges that article can be left in secure location, he or she may do so. Employee's signature constitutes valid proof of delivery. NO. 7 <input type="checkbox"/> Wednesday <input type="checkbox"/> Thursday <input type="checkbox"/> Friday Customer Signature: _____ | | |

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| METHOD OF PAYMENT: Express Mail Corporate Acct. No. _____ | | |
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| 09593-150338 | | |

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| Federal Deposit Acct. No. | PHONE () | |
| Postage Due Acct. No. | | |
| TO: (PLEASE PRINT) MAIL STOP Office of Petitions COMMISSIONER FOR PATENTS P.O. BOX 1450 ALEXANDRIA VA 22313-1450 Attn: Tom Hawkins | | |

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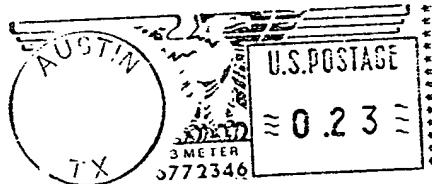


On the date stamped hereon, the following was **RECEIVED** PATENT
received in the U.S. Patent and Trademark Office:

Applicant: Dervich Brium Docket No. 650057-420
Assignee: Metrowerks Corp Resp. Atty: Den OFFICE OF PETITIONS
Filing Date: 1/31/00 Date Mailed: 4/16/04
Serial No.: 09/494 765 Date Due:

Title: Software Analysis System Having An Algorithmic Selection Capability
Capable of Generating Data from a Next System . . .

Transmittal Letter
 Application PCT Utility Conversion
Prov Div Cont CPA Reissue
Spec pages; Claims pages
Drawings pages; Abstract pages
 Declaration POA
 Form 1449, IDS
 Assignment w/ Recordation Cover Sheet
 Cert. Of Mailing, First Class
 Authorization to Charge Deposit Account
50-0897
 Cert. Of Express Mail No. EV 342156164S
 Other Petition To Withdraw Holder's Abandonment Based On
Factual To Cause Office Action



A Dedur

ATIN: INTELLECTUAL PROPERTY SECTION
ANDREWS & KURTH, L.L.P.
111 CONGRESS AVE., SUITE 1700
AUSTIN, TEXAS 78701-4069

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Label 11-F June 2002



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| PO ZIP Code | Day of Delivery | Flat Rate Envelope | |
| | <input type="checkbox"/> Next <input type="checkbox"/> Second | <input type="checkbox"/> | |
| Date In | Postage | | |
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| Time In | Military | | |
| <input type="checkbox"/> AM <input type="checkbox"/> PM | <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day | Return Receipt Fee | |
| Weight lbs. oz. | Int'l Alpha Country Code | COD Fee | Insurance Fee |
| No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday | Acceptance Clerk Initials | Total Postage & Fees \$ | |

| DELIVERY (POSTAL USE ONLY) | | | |
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| Delivery Attempt: | Time | Employee Signature | |
| Mo. Day | <input type="checkbox"/> AM <input type="checkbox"/> PM | | |
| Delivery Date | Time | Employee Signature | |
| Mo. Day | <input type="checkbox"/> AM <input type="checkbox"/> PM | | |

WAIVER OF SIGNATURE (Domestic Only) Additional merchandise insurance is void if waiver of signature is requested. I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.

NO DELIVERY Weekend Holiday

Customer Signature _____

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METHOD OF PAYMENT:

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Federal Agency Acct. No. or
Postal Service Acct. No.

FROM: (PLEASE PRINT)

PHONE ()

Denko
ANDREWS & KURTH
111 CONGRESS AVE STE 1700
AUSTIN TX 78701-4069

9593-150331 (420)

TO: (PLEASE PRINT)

PHONE ()

Petitions
MAIL STOP
COMMISSIONER FOR PATENTS
PO BOX 1450
ALEXANDRIA VA 22313-1450

Attn: Tom Hawkins

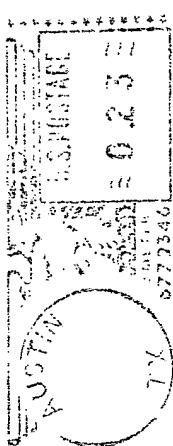


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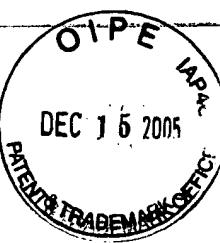
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DEC 16 2005

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G. Deedee
ATTN: INTELLECTUAL PROPERTY SECTION
ANDREWS KURTH, LLP
111 CONGRESS AVE., SUITE 1700
AUSTIN, TEXAS 78701-4069

PATENT

On the date stamped hereon, the following was received in the U.S. Patent and Trademark Office:

Applicant: Birum Docket No. 650059.420 (AC 150331)
Assignee: Metrawerks Corp Resp. Atty: DeNKO
Filing Date: 1/31/00 Date Mailed: 9/20/04
Serial No.: 09/1494 765 Date Due: _____

Title: Software Analysis System Having An Apparatus For Selectively Collecting Analysis Data From A Target System . . .

Transmittal Letter Check No. _____ for \$ _____
 Application PCT Utility Conversion Response to Office Action Amendment
Prov. Div. Cont. CPA Reissue
Spec. pages; Claims pages Extension of Time Request mos.
Drawings pages; Abstract pages Petition for _____
 Declaration POA Notice of Appeal Appeal Brief
 Form 1449, IDS Formal Drawings sheets Issue Fee
 Assignment w/ Recordation Cover Sheet Maintenance Fee Mntc Fee Addressee
 Cert. Of Mailing, First Class PCT Request pages PCT Fee Calc Sheet
 Authorization to Charge Deposit Account Chapter II Demand for Substantive Examination
50-0897 Response to Invitation to Correct

Cert. Of Express Mail No. EV 434215647US
 Other copy of Petition to Withdraw Holding or Abandonment based on failure to receive
Office action mailed 4/16/04; Express Mail forwarded 4/16/04 and
return post card mailed 4/16/04 received by Office of Petitions 4/16/04



On the date stamped hereon, the following was received in the U.S. Patent and Trademark Office:

Cant: Bircum Docket No. 160059-1
 Inee: Motorworks Corp Resp. Atty: Junker
 I Date: 11/31/04 Date Mailed: 9/20/04
 I No.: 091494-765 Date Due:

Software Analysis System Having An Interface for Selectively
Extracting Analysis Data from a Target System

Transmittal Letter Check No. _____ for \$ _____
 Application PCT Utility Conversion _____
 Prov Div Cont CPA Reissue _____
 Spec _____ pages; Claims _____ pages
 Drawings _____ pages; Abstract _____ pages
 Declaration POA
 Form 1449, IDS
 Assignment w/ Recordation Cover Sheet
 Cert. Of Mailing, First Class
 Authorization to Charge Deposit Account
 50-0897
 Cert. Of Express Mail No. EV 434215647US

Response to Office Action Amendment
 Extension of Time Request _____ mos.
 Petition for _____
 Notice of Appeal Appeal Brief
 Formal Drawings _____ sheets Issue Fee
 Maintenance Fee Mntc Fee Addressee
 PCT Request _____ pages PCT Fee Calc Sheet
 Chapter II Demand for Substantive Examination
 Response to Invitation to Correct

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| Weight (lbs. ozs.) | Int'l Alpha Country Code | COD Fee | Insurance Fee |
| No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday | Acceptance Clerk Initials | Total Postage & Fees \$ | |

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| Express Mail Corporate Acct. No. | | |
| FROM: (PLEASE PRINT) | PHONE () | |
| <p>✓ <i>LENKE</i></p> <p>AMERICAN DURF 442 CLOTH CO. 4TH & 5TH ST. PHILADELPHIA PA 19102 TEL 215-735-1410</p> <p><i>LENKE</i></p> <p>442 CLOTH CO. 4TH & 5TH ST. PHILADELPHIA PA 19102 TEL 215-735-1410</p> | | |
| TO: (PLEASE PRINT) | PHONE () | |
| <p><i>LENKE</i></p> <p>AMERICAN DURF 442 CLOTH CO. 4TH & 5TH ST. PHILADELPHIA PA 19102 TEL 215-735-1410</p> <p><i>LENKE</i></p> <p>442 CLOTH CO. 4TH & 5TH ST. PHILADELPHIA PA 19102 TEL 215-735-1410</p> | | |

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ANDREWS

ATTORNEYS

KURTH LLP **BEST AVAILABLE COPY**



111 Congress Avenue, Suite 1700
Austin, Texas 78701
512.320.9200 Phone
512.320.9292 Fax
andrewskurth.com

Scott Denko
(512) 320.9259 Direct
scottdenko@andrewskurth.com

April 16, 2004

VIA EXPRESS MAIL NO. EV434215616US

EV434215616US

Commissioner for Patents
Mail Stop Petition
Attn: Tom Hawkins
P.O. Box 1450
Alexandria, VA 22313-1450

Re: Application No.: 09/494,765

Filing Date: 01/31/00

Title: Software Analysis System Having An Apparatus For Selectively Collecting
Analysis Data From A Target System Executing Software Instrumented With Tag
Statements And Method For Use Thereof

Inventor: Derrick Jason Birum

Assignee: Metrowerks Corporation

Examiner: Chameli Das

Group: 2122

Atty Docket No.: 650059.420

Dear Commissioner:

Please find enclosed for filing the following:

1. Petition To Withdraw Holding of Abandonment Based On Failure To Receive Office Action; and
2. A return postcard for confirmation of receipt.

We believe that no fees are due related to the filing of the above-referenced Petition. If, however, the Commissioner deems that fees are due, then the Commissioner is hereby authorized to debit the costs of such fees to Deposit Account No. 50-0897 on which account the undersigned is authorized to charge.

Please return the enclosed postcard to confirm receipt of the above-referenced items.

Yours very truly,

J. Scott Denko
Registration No. 37,606



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Attorney Docket No. 650059.420

THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 09/494,765

Title: Software Analysis System Having An Apparatus For Selectively Collecting Analysis Data From A Target System Executing Software Instrumented With Tag Statements And Method For Use Thereof

Inventor: Derrick Jason Birum

Assignee: Metrowerks Corporation

Filing Date: 01/31/00

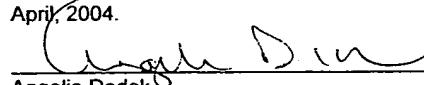
Examiner: Chameli Das

Group: 2122

Assistant Commissioner for Patents
Mail Stop Petition
Attn: Tom Hawkins
P.O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATE OF MAILING UNDER 37 CFR §1.10

I hereby certify that this paper or fee is being deposited with the United States Postal Service via Express Mail EV434215616US addressed to Assistant Commissioner for Patents, Mail Stop Petition, P.O. Box 1450, Alexandria, VA 22313-1450 on the 16 day of April, 2004.


Angelia Dedek

PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION

The Applicant respectfully petitions the U.S. Patent and Trademark Office to withdraw the holding of abandonment of Patent Application No. 09/494,765 under *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971) and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 O.G. 53 (Nov. 16, 1993).

Regarding the above-referenced application, the Applicant received a Notice of Abandonment mailed on April 8, 2004 which states as the cause of abandonment failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of a Notice of Allowance and Issue Fee Due. Neither the Applicant or Applicant's representative received a Notice of Allowance and Issue Fee Due in this matter.

REPLY AND STATEMENT

The Notice of Abandonment was mailed on April 8, 2004 and states as the cause of abandonment failure to timely pay a required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of a Notice of Allowance and Issue Fee Due. A copy of the Notice is attached as Exhibit "A".

The Applicant never received a Notice of Allowance and Issue Fee Due in this matter. A search of the file jacket and docket records maintained by the office of the Applicant's representative indicates that such Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered *had it been received* and docketed is attached as Exhibit "B".

The Applicant filed a "Revocation of Power of Attorney With New Power of Attorney and Change of Correspondence Address" on October 29, 2003, which is attached as Exhibit "C". The filing of the Revocation of Power of Attorney With New Power of Attorney and Change of Correspondence Address is evidenced by a copy of the return receipt postcard bearing the stamp of the United States Patent and Trademark Office indicating its receipt.

The Applicant hereby requests that a copy of the Notice of Allowance and Issue Fee due be promptly transmitted by facsimile to the Applicant's undersigned attorney at (512) 320-9292 so that Applicant may submit the required Issue Fee and Publication Fee, if applicable.

PETITION FEE

The Applicant believes that no fee is due with the filing of this Petition. However, if the Commissioner determines that such a fee is due, the Commissioner is hereby authorized to debit such fees from the firm Deposit Account No. 50-0897 on which the undersigned is authorized to sign.

SUMMARY

The Commissioner is hereby authorized to charge any fee deficiency to our deposit account 50-0897.

The Applicant respectfully requests an early decision on this Petition and appreciates the attention of the Petitions Office and the Petitions Examiner. The Applicant asks that the Decision on Petition be transmitted by facsimile to the Applicant's undersigned attorney at (512) 320-9292. The Applicant additionally requests a copy of the Notice of Allowance and Issue Fee Due be transmitted by facsimile to the Applicant's undersigned attorney at (512) 320-9292. Should the Petitions Examiner have any questions upon which the Applicant's attorney may be able to provide assistance, a phone call to the Applicant's attorney at the phone number listed below would be welcome.

Respectfully submitted,

By:

J. Scott Denko
Attorney for Applicant
Registration No. 37,606

ANDREWS KURTH, L.L.P.
111 Congress Ave., Suite 1700
Austin, Texas 78701-4069
(512) 320-9259 (office)
(512) 320-9292 (facsimile)

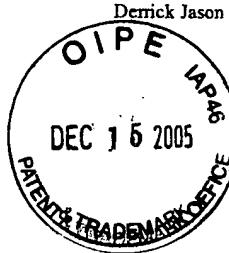
Date: April 16, 2004



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/494,765 | 01/31/2000 | Derrick Jason Birum | 120073.420 | 3907 |
| 36485 | 7590 | 04/08/2004 | | |
| J. SCOTT DENKO ANDREWS & KURTH LLP 111 CONGRESS AVE., SUITE 1700 AUSTIN, TX 78701 | | | EXAMINER | |
| | | | DAS, CHAMELI | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2122 | |
| DATE MAILED: 04/08/2004 | | | | |



Please find below and/or attached an Office communication concerning this application or proceeding.

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Date Received: 4/15/04

Date Due: _____

Docketed by: _____

Exhibit A

BEST AVAILABLE COPYUNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark OfficeAddress: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

| PPLICATION NUMBER | FILING DATE | FIRST NAMED APPLICANT | ATTORNEY DOCKET NO. |
|-------------------|-------------|-----------------------|---------------------|
| 9/4/04 765 | | | |



EXAMINER

ART UNIT

PAPER NUMBER

13

DATE MAILED:

NOTICE OF ABANDONMENTABANDONMENT
CONTACT PERSON IS:
TOMI A. WATKINS
305-8380

This application is abandoned in view of:

Applicant's failure to timely file a proper reply to the Office letter mailed on _____.

A reply (with Certificate of Mailing or Transmission of _____) was received on _____ which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.

A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).

A reply was received on _____, but it does not constitute a proper reply, or a *bona fide* attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in the last box below).

No reply has been received.

Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).

The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85)(or Notice of Publication Fee Due).

The submitted fee of \$ _____ is insufficient. A balance of \$ _____ is due.
The issue fee by 37 CFR 1.18 is \$ _____. The publication fee, if required, by 37 CFR 1.18(d) is \$ _____.

The issue fee and publication fee, if applicable, have not been received.

Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTOL-37).

Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.

No corrected drawings have been received.

The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all the applicants.

The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon filing of a continuing application.

The decision by the Board of Patent Appeals and Interferences rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.

The reason(s) below: _____

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

Respond to the Notice of Abandonment by one of the following:

Petition To Withdraw Holding of Abandonment (See MPEP 711.03(c) I) and 37 CFR § 1.181) No fee required

Where an applicant contends that the application is not in fact abandoned (e.g., there is disagreement as to the sufficiency of the reply, or as to controlling dates), a petition under 37 CFR § 1.181(a) requesting withdrawal of the holding of abandonment is the appropriate course of action. Any petition under 37 CFR § 1.181, to withdraw the holding of abandonment not filed within 2 months of the mail date of a Notice of Abandonment may be dismissed as untimely under 37 CFR § 1.181(f). In order for a petition to be granted, the evidence must be sufficient according to one of the following standards:

- 37 CFR § 1.8(b) Certificate of Mailing
- 37 CFR § 1.10 "Express Mail" mailing
- MPEP 503 Postcard Receipt as Prima Facie Evidence

Petition To Withdraw Holding Of Abandonment should be addressed as follows:
By mail: Commissioner For Patents, P.O. Box 1450, Mail Stop: Issue Fee, Alexandria, VA
22313-1450

By facsimile: 703-305-8755 or 703-305-4372

Petition To Withdraw Holding Of Abandonment Based On Failure To Receive Office Action (See MPEP 711.03(c) II). No fee required

Where an applicant contends that the original Notice of Allowance and Issue Fee Due was never received. If adequately supported, the Office may grant the petition and remail the Office action. The showing required establishing non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Petition should be addressed to the Technology Center handling the application as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450
(Mark attention of a particular office or individual)
By facsimile: Technology Center numbers posted at <http://www.uspto.gov/september1/faxnotice.htm>

Petition To Revive An Abandoned Application (See MPEP 711.03(c) III)

Where there is no dispute as to whether an application is abandoned (e.g. the applicant's contentions merely involve the cause of abandonment) a petition under 37 CFR § 1.137 (a) unavoidable or (b) unintentionally (accompanied by the appropriate petition fee) is necessary to revive the abandoned application.

Petitions under 37 CFR § 1.137 should be addressed to the Office of Petitions as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450
By hand: Crystal Plaza 4, Rm. 3C23, 2201 Clark Place, Arlington, VA
By facsimile: 703-308-6916
Petition For Revival Of An Application For Patent Abandoned Unavoidably Under 37 CFR § 1.137(a) and Unintentionally Under 37 CFR 1.137(b), forms available at USPTO website – <http://www.uspto.gov>

Note: Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment.

As of 4/12/04

METROWERKS PATENT DOCKET

| METROWERKS PATENT DOCKET | | | | | |
|--|------------|-------------|----------------------|---|----------------------|
| | Appl. No. | Filing Date | US Patent No | Inventors | Status – Last Action |
| Software Analysis System Having an Apparatus for Selectively Collecting Analysis Data From a Target System Executing Software Instrumented with Tag Statements and Methods for Use Thereof (420) | 09/494,765 | 1/31/00 | Birum; Ellis; Tinker | 10/28/03 – Filed Amendment and Response 10/29/03 – Filed Revocation of POA with New POA and Change of Correspondence Address 3/30/04 – Rec'd Notice of Acceptance of POA from PTO | Action Needed |

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Exhibit B

PATENT APPLICATION INDEX

Docket No. 650059-420 Client Ref. No.
 Inventor Derrick Jason Birum, Richard Donald Ellis and Jeffrey Lee Tinker
 Invention Title SOFTWARE ANALYSIS SYSTEM HAVING AN APPARATUS FOR SELECTIVELY COLLECTING ANALYSIS DATA FROM A TARGET SYSTEM EXECUTING SOFTWARE INSTRUMENTED WITH TAG STATEMENTS AND METHOD FOR USE THEREOF
 U.S. Filing Date January 31, 2000
 U.S. Application No. 09/494,765
 Examiner Phone No. 0
 Art. Unit 2762
 File History:
 Small Entity NO
 Assigned To Metrowerks, recorded on 04/28/03 at Reel 013609 Frame 0862
 General Authorization Filed: January 31, 2000

| | Document | Date Filed with PTO | Date Mailed from PTO | Due Date |
|-----|---|---------------------|----------------------|----------|
| 1. | Application (w/ Decl., Assign., General Authorization and Information Disclosure Statement) | 01/31/2000 | | |
| 2. | Request for Refund and Small entity Statement | 03/15/00 | | |
| 3. | Acknowledgement of Request for Refund | | 03/28/00 | |
| 4. | Recorded Assignment | | 04/18/00 | |
| 5. | FILING RECEIPT | | 04/25/00 | |
| 6. | European Search Report rcvd from foreign associate | | 06/20/01 | 08/20/01 |
| 7. | Supplemental Information Disclosure Statement w/EP Search | 08/15/01 | | |
| 8. | Supplemental IDS with 12 References | 06/01/03 | | |
| 9. | Recorded Assignment -Assigned to Metrowerks | 04/28/03 | | |
| 10. | Office Action | 04/28/03 | 07/28/03 | |
| 11. | Petition for extension of time; amendment & response | 10/28/03 | | 10/28/03 |
| 12. | Recalculation of Priority Date with New Prior Art; no fax | 10/29/03 | | |
| 13. | Change of Correspondence Address Notice of Abandonment | | 4/8/04 | |
| 14. | Notice of Acceptance of PPA | | 3/30/04 | |
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ANDREWS
ATTORNEYS
KURTH LLP



Andrews & Kurth L.L.P.
111 Congress Avenue, Suite 1700
Austin, Texas 78701
512.320.9200 Phone
512.320.9292 Fax
andrewskurth.com

J. Scott Denko
512.320.9259 Direct
scottdenko@aklp.com@andrewskurth.com

October 29, 2003

BY EXPRESS MAIL
AIRBILL NO. EV271668782US

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Re: Application No.: 09/494,765
Title: "Software Analysis System Having An Apparatus For Selectively Collecting Analysis Data From A Target System Executing Software Instrumented With Tag Statements And Method For Use Thereof"
Filing Date: 01/31/00
Inventor: Derrick J. Birum, et al
Assignee: Metrowerks Corporation
Examiner: A. Khatri
Group: 2762
Docket No. 120073.420

Dear Commissioner:

Enclosed for filing please find the following:

1. Revocation of Power of Attorney With New Power of Attorney and Change of Correspondence Address; and
2. Statement Under 37 C.F.R. § 3.73(b).

Please return the postcard confirming your receipt of the enclosed materials.

Yours truly,

ANDREWS KURTH LLP



J. Scott Denko
Exhibit "C"



Attorney Docket No.: 120073.420

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Derrick J. BIRUM

Group Art Unit: 2762

Application No.: 09/494,765

Examiner: A. Khatri

Filing Date: January 31, 2000

Confirmation No.: 3907

Title: SOFTWARE ANALYSIS SYSTEM HAVING AN APPARATUS FOR SELECTIVELY COLLECTING ANALYSIS DATA FROM A TARGET SYSTEM EXECUTING SOFTWARE INSTRUMENTED WITH TAG STATEMENTS AND METHOD FOR USE THEREOF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

STATEMENT UNDER 37 C.F.R. § 3.73(b)

Sir:

METROWERKS CORPORATION, a corporation operating under the laws of the state of Texas, is an owner of the patent application identified above by virtue of either:

A. An assignment from the inventor(s) of the patent application identified above, a copy of which is attached.

OR

B. A chain of title from the inventor(s), of the patent application identified above, to METROWERKS CORPORATION as shown below:

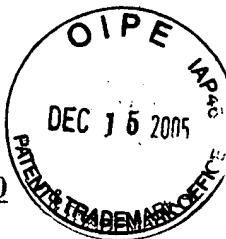
1. From: Derrick J. BIRUM; Richard D. ELLIS & Jeffrey L. TINKER
To: APPLIED MICROSYSTEMS CORPORATION
The document was recorded in the U.S. Patent and Trademark
Office at Reel 010533, Frame 0680.

2. From: APPLIED MICROSYSTEMS CORPORATION
To: METROWERKS CORPORATION
The document was recorded in the U.S. Patent and Trademark
Office at Reel 013609, Frame 0862.

The undersigned (whose title is supplied below) is empowered to sign this statement on behalf of METROWERKS CORPORATION.

Dated: 12/29/05

Signature: _____
Name: David Clifton
Title: Vice-President of Segment Marketing
Company name: METROWERKS CORPORATION



Attorney Docket No.: 120073.420

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Derrick J. BIRUM, et al.

Group Art Unit: 2762

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REVOCATION OF POWER OF ATTORNEY WITH NEW POWER OF ATTORNEY AND CHANGE OF CORRESPONDENCE ADDRESS

Sir:

In the above-referenced patent application, I hereby revoke all prior powers of attorney and appoint the **ANDREWS KURTH LLP** attorneys and agents associated with **Customer Number 36,485** to prosecute and maintain the patent application identified above and to transact all business in the Patent and Trademark Office connected therewith, including full power of association, substitution, and revocation.

Please address all telephone calls to: **J. Scott Denko** at (512) 320-9259.

Please address all correspondence to **J. Scott Denko** at the address corresponding to **Customer Number 36,485**, currently:

J. Scott Denko
ANDREWS KURTH LLP
Suite 1700
111 Congress Ave., Suite 1700
Austin, Texas 78701

I am the:

Assignee of record of the entire interest. (Statement under 37 C.F.R. § 3.73(b) is attached).

Dated: 10/29/03

Signature:

Name:

Title:

Company name: **METROWERKS CORPORATION**

David Clifton

Vice-President of Segment Marketing



On the date stamped hereon, the following was received in the U.S. Patent and Trademark Office:

Applicant: BIRUM Docket No. 120073-420
Assignee: Metronews Resp. Atty: DENKO
Filing Date: 11-31-03 Date Mailed: OCT 29 2003
Serial No.: 09/1494,765 Date Due:

Title: Software Analysis System Having An Aggregator
for Selectively Collecting And Storing Data...

Transmittal Letter
 Application PCT Utility Conversion
Prov Div Cont CPA Reissue
Spec pages; Claims pages
Drawings pages; Abstract pages
 Declaration POA
 Form 1449, IDS
 Assignment w/ Recordation Cover Sheet
 Cert. of Mailing, First Class
 Authorization to Charge Deposit Account

50-0897

Cert. of Express Mail No.

E 1271668-782 US

Other Statement under 37 CFR 8.3, 73(b)
Redaction of POA with new POA and change correspondence address



ATIN: INTELLECTUAL PROPERTY SECTION
ANDREWS & KURTH, L.L.P.
111 CONGRESS AVE., SUITE 1700
AUSTIN, TEXAS 78701-4069

A. Deden

650059.420



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ORIGIN (POSTAL USE ONLY)

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| Date In Mo. <u>10</u> Day <u>29</u> Year <u>03</u> | Postage <input type="checkbox"/> 12 Noon <input type="checkbox"/> 3 PM | <u>\$ 13.65</u> |
| Time In <u>928</u> | Military | Return Receipt Fee |
| <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM | <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day | |
| Weight lbs. <u>24</u> ozs. | Int'l Alpha Country Code <u>CD</u> | COD Fee <input type="checkbox"/> |
| No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday | Acceptance Clerk Initials <u>CD</u> | Insurance Fee <input type="checkbox"/> |
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VA 22313-1450

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| Cashier's Name | ROBERT | Cashier KBHPP9 |
| Stock Unit Id | HERNOSILLO | |
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| USPS # | 4879830130 | |
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| EXP. Mail PO-ADD | | 0.00 |
| Destination: | 22313 | |
| Weight: | 2.400Z | |
| Postage Type: | Affixed | |
| Affix. Post.: | -13.65 | |
| Total Cost: | 13.65 | |
| Base Rate: | 13.65 | |
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| Subtotal] | | 0.00 |
| Total | 0.00 | |

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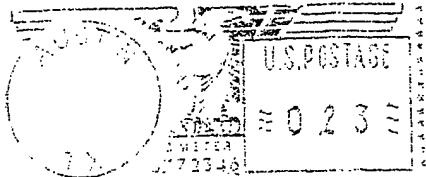
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| PO ZIP Code | Day of Delivery | Flat Rate Envelope |
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| Time In | Return Receipt Fee | |
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| No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday | Acceptance Clerk Initials | Insurance Fee |
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| Delivery Date | Time | Employee Signature |
| Mo. Day | <input type="checkbox"/> AM <input type="checkbox"/> PM | |
| <input type="checkbox"/> WAIVER OF INSURANCE (Domestic Only) Additional merchandise insurance is void if waiver of signature is selected. I wish delivery to be made without obtaining signature of addressee or anyone else. If delivery employee judges that article can be left in secure location without damage, delivery employee's signature constitutes valid proof of delivery. NO DELIVERY <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday _____ | | |
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ATIN: INTELLECTUAL PROPERTY SECTION
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AUSTIN, TEXAS 78701-4069

03

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On the date stamped hereon, the following was **RECEIVED**
received in the U.S. Patent and Trademark Office:

APR 19 2004
Applicant: Derrick Brinum Docket No. 650057-420
Assignee: Metrowerks Corp Resp. Atty: Den OFFICE OF PETITIONS
Filing Date: 1/31/00 Date Mailed: 4/16/04
Serial No.: 09/494 765 Date Due:
Title: Software Analysis System Having An Algorithm Selecting Velocity
Analysis Data from a Target System . . .

Transmittal Letter
 Application PCT Utility Conversion
Prov Div Cont CPA Reissue
Spec pages; Claims pages
Drawings pages; Abstract pages
 Declaration POA
 Form 1449, IDS
 Assignment w/ Recordation Cover Sheet
 Cert. Of Mailing, First Class
 Authorization to Charge Deposit Account
50-0897
 Cert. Of Express Mail No. EV 33421561645
 Other Petition to Withdraw Holdin; & Abandonment Based On
Failure to Claim Active Action

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Search results as of: 12-12-2005::11:18:45 E.T.

[PAIR](#)[FAQ](#)[Help](#)[Feedback](#)[Other Links](#)[E-Business Center Patents](#)[Employee Locator](#)[Class/Subclass GAU Information](#)[Information Contacts](#)[Assignments](#)[Image File Wrapper](#)[Patent Term Extension History](#)**Search results for application number: 09/494,765**

| | | | |
|-------------------------|---|----------------------------|---------------------------------------|
| Application Number: | 09/494,765 | Customer Number: | 36485 |
| Filing or 371(c) Date: | 01-31-2000 | Status: | Abandoned -- Failure to Pay Issue Fee |
| Application Type: | Utility | Status Date: | 04-08-2004 |
| Examiner Name: | DAS, CHAMELI | Location: | TC 2100 SPE OF GAU ASSIGNED |
| Group Art Unit: | 2122 | Location Date: | 09-16-2004 |
| Confirmation Number: | 3907 | Earliest Publication No.: | - |
| Attorney Docket Number: | 120073.420 | Earliest Publication Date: | - |
| Class/ Sub-Class: | 717/131 | Patent Number: | - |
| First Named Inventor: | Derrick Birum, Duvall, WA | Issue Date of Patent: | - |
| Title Of Invention: | SOFTWARE ANALYSIS SYSTEM HAVING AN APPARATUS FOR SELECTIVELY COLLECTING ANALYSIS DATA FROM A TARGET SYSTEM EXECUTING SOFTWARE INSTRUMENTED WITH TAG STATEMENTS AND METHOD FOR USE THEREOF | | |

Select Search Option

 Assignments Image File Wrapper Patent Term Extension History Search**File History**

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| Date | Contents Description |
|------------|---|
| 09-20-2004 | Workflow incoming petition IFW |
| 04-08-2004 | Mail Abandonment for Failure to Pay Issue Fee |
| 04-08-2004 | Abandonment for Failure to Pay Issue Fee |
| 03-30-2004 | Correspondence Address Change |
| 03-30-2004 | Change in Power of Attorney (May Include Associate POA) |
| 01-12-2004 | Receipt into Pubs |
| 12-01-2003 | Workflow - File Sent to Contractor |
| 12-01-2003 | Receipt into Pubs |
| 11-28-2003 | Dispatch to Publications |
| 11-19-2003 | Mail Notice of Allowance |
| 11-19-2003 | Mail Formal Drawings Required |
| 11-19-2003 | Formal Drawings Required |
| 11-19-2003 | Notice of Allowance Data Verification Completed |
| 11-19-2003 | Case Docketed to Examiner in GAU |
| 11-10-2003 | Case Docketed to Examiner in GAU |
| 11-07-2003 | Date Forwarded to Examiner |
| 10-28-2003 | Response after Non-Final Action |
| 10-28-2003 | Request for Extension of Time - Granted |
| 09-23-2003 | Case Docketed to Examiner in GAU |
| 05-06-2003 | Information Disclosure Statement (IDS) Filed |
| 04-28-2003 | Mail Non-Final Rejection |
| 04-24-2003 | Non-Final Rejection |
| 03-19-2002 | Case Docketed to Examiner in GAU |
| 03-13-2002 | Case Docketed to Examiner in GAU |
| 08-17-2001 | Information Disclosure Statement (IDS) Filed |
| 10-06-2000 | Case Docketed to Examiner in GAU |
| 05-17-2000 | Case Docketed to Examiner in GAU |
| 01-31-2000 | Information Disclosure Statement (IDS) Filed |
| 04-12-2000 | Application Dispatched from OIPE |
| 04-12-2000 | Correspondence Address Change |
| 02-28-2000 | IFW Scan & PACR Auto Security Review |
| 02-07-2000 | Preexamination Location Change |
| 02-07-2000 | Initial Exam Team nn |

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Respond to the Notice of Abandonment by one of the following:

Petition To Withdraw Holding of Abandonment (See MPEP 711.03(c) I) and 37 CFR § 1.181) No fee required

Where an applicant contends that the application is not in fact abandoned (e.g., there is disagreement as to the sufficiency of the reply, or as to controlling dates), a petition under 37 CFR § 1.181(a) requesting withdrawal of the holding of abandonment is the appropriate course of action. Any petition under 37 CFR § 1.181, to withdraw the holding of abandonment not filed within 2 months of the mail date of a Notice of Abandonment may be dismissed as untimely under 37 CFR § 1.181(f).

In order for a petition to be granted, the evidence must be sufficient according to one of the following standards:

- 37 CFR § 1.8(b) Certificate of Mailing
- 37 CFR § 1.10 "Express Mail" mailing
- MPEP 503 Postcard Receipt as Prima Facie Evidence

Petition To Withdraw Holding Of Abandonment should be addressed as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Mail Stop: Issue Fee, Alexandria, VA
22313-1450

By facsimile: 703-305-8755 or 703-305-4372

Petition To Withdraw Holding Of Abandonment Based On Failure To Receive Office Action (See MPEP 711.03(c) II). No fee required

Where an applicant contends that the original Notice of Allowance and Issue Fee Due was never received. If adequately supported, the Office may grant the petition and remail the Office action. The showing required establishing non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Petition should be addressed to the Technology Center handling the application as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450
(Mark attention of a particular office or individual)

By facsimile: Technology Center numbers posted at <http://www.uspto.gov/september1/faxnotice.htm>

Petition To Revive An Abandoned Application (See MPEP 711.03(c) III)

Where there is no dispute as to whether an application is abandoned (e.g. the applicant's contentions merely involve the cause of abandonment) a petition under 37 CFR § 1.137 (a) unavoidable or (b) unintentionally (accompanied by the appropriate petition fee) is necessary to revive the abandoned application.

Petitions under 37 CFR § 1.137 should be addressed to the Office of Petitions as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450

By hand: Crystal Plaza 4, Rm. 3C23, 2201 Clark Place, Arlington, VA

By facsimile: 703-308-6916

Petition For Revival Of An Application For Patent Abandoned Unavoidably Under 37 CFR § 1.137(a) and Unintentionally Under 37 CFR 1.137(b), forms available at USPTO website – <http://www.uspto.gov>

Note: Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment.